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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 09-50026-reg

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In the Matter of:

GENERAL MOTORS CORPORATION, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

January 18, 2012  
9:49 AM

B E F O R E:  
HON. ROBERT E. GERBER  
U.S. BANKRUPTCY JUDGE

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Debtors' Eighty-Third Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees) - Only Cobble Claim

Motion for Objection to Claim(s) Number: 70860 and 70869 Filed by Tracy Woody and Motion Requesting Enforcement of Court Orders Setting Deadlines to File Proofs of Claim

Motion of Post-Effective Date Debtors and Motors Liquidation Company GUC Trust for Entry of Order Pursuant to 11 U.S.C. Sections 105(A) and 1142(B) and Fed R. Bankr. P. 7012(B) and 9014(C) (I) Directing the Tullises to Dismiss the Debtors and Their Attorneys from Pending Action with Prejudice; and (II) Enforcing Prior Orders of this Court by Enjoining the Tullises from Further Action Against the Debtors, Post-Effective Date Debtors, Motors Liquidation Company GUC Trust, and Their Officers and Professionals

Transcribed by: Aliza Chodoff

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A P P E A R A N C E S :

WEIL GOTSHAL & MANGES LLP

Attorneys for Debtors

767 Fifth Avenue

New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ.

DICKSTEIN SHAPIRO LLP

Attorneys for the Motors Liquidation Company GUC Trust

1633 Broadway

New York, NY 10020

BY: STEPHANIE GREER, ESQ.

ALSO PRESENT:

JOSEPH COBBLE, Claimant, In Pro Se (Telephonically)

CLINTON M. TULLIS, Claimant, In Pro Se (Telephonically)

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P R O C E E D I N G S

THE COURT: Have seats, please. Okay. General Motors, Motors Liquidation. I know of three matters that we have disputed, and I sense we have some others that we need to take care of even though there may not be opposition. Mr. Smolinsky, are you taking the lead? You want to give me an update on where we stand?

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky of Weil Gotshal & Manges, for the Motors Liquidation Company GUC Trust.

I believe this morning we have four matters on. Two of them relate to Tracy Woody. I don't believe there are other -- any other matters on the calendar. I do not believe that Ms. Woody signed up for CourtCall. And rather than go in the order of the agenda, to the extent that the Woody matter is uncontested, perhaps we should start there.

THE COURT: Um-hum. Ms. Woody, are you on the phone? No. Anybody in the court here on behalf of Ms. Woody? No.

MR. COBBLE: (Indiscernible)

THE COURT: Yes, Mr. Cobble. If I'm not mistaken, you have a pension or a welfare benefit related claim, which we'll be dealing with shortly. But before that, Mr. Cobble, I want to deal with Ms. Woody if Ms. Woody is on the phone or somebody's on on her behalf. All right. I hear no response.

Mr. Smolinsky, I think the brief on Ms. Woody was

1 submitted by Ms. Greer. Are you going to be handing off to her  
2 on that or --

3 MR. SMOLINSKY: Yes, Your Honor.

4 THE COURT: Okay. Ms. Greer.

5 MS. GREER: Good morning, Your Honor. Stephanie Greer  
6 from Dickstein Shapiro, on behalf of the Trust.

7 As you said, Your Honor, we're here on the Tracy Woody  
8 claims this morning.

9 THE COURT: Can you come closer to the microphone,  
10 please, Ms. --

11 MS. GREER: Sure.

12 THE COURT: -- Greer?

13 MS. GREER: It's always a problem. Your Honor, we set  
14 forth in the pleadings the basis for the objection to Ms.  
15 Woody's claims. Each of the claims were filed late; the first  
16 two in accordance with the bar date order, and the second two  
17 in accordance with this Court's order. Ms. Woody's pleadings  
18 haven't satisfied her burden of excusable neglect, and so I'm  
19 happy to rest on our pleadings or answer whatever questions  
20 Your Honor may have.

21 THE COURT: Well, I read the papers, Ms. Greer. Do  
22 we -- not we -- do you have any understanding as to why she  
23 blew the second bar date; the deadline I'd given her of thirty  
24 days, but only did it by -- missed it by a few days?

25 MS. GREER: Your Honor, I don't know. And there's a

1 few facts that I would like to bring this Court's attention --  
2 to this Court's attention before you make a ruling. And the  
3 first is that Ms. Woody did file an affidavit of service with  
4 her second group of claims, which was dated February 5th. The  
5 deadline to file was February 7th. Of course, the order says  
6 it has to be received by the Court by the 7th. We didn't  
7 receive it -- or the trust, Garden City Group, didn't receive  
8 it until the 10th. So technically, the claims were late.

9 Ms. Woody has been nonresponsive to our request for  
10 more information as to why the claims were late and to --  
11 talking to her about potential resolution of the claims. So we  
12 were at sort of a loss to resolve them on our own, and that's  
13 why we had to file these pleadings because the obje -- the  
14 claims were technically late.

15 THE COURT: She mailed it in time, but it wasn't  
16 received in time?

17 MS. GREER: That's right, Your Honor. And while we're  
18 on the subject, Your Honor, I -- with respect to the first  
19 claims, there's also a slight factual issue I wanted to bring  
20 to your attention. As an officer of the court, despite the  
21 fact that Ms. Woody hasn't raised it herself, and that is that  
22 there was -- there is at least some question as to whether she  
23 got actual notice of the original bar date order.

24 THE COURT: I had that concern at the last hearing.

25 MS. GREER: Yeah. And we went back and looked at the

1 facts, and it looked like there was a package mailed to her  
2 address. However, upon looking at it even fur -- more closely,  
3 it looks like there was a mistake in the way that the address  
4 was -- somehow ended up on the envelope. So I think there is  
5 at least some question as to whether she had actual notice.

6 Now, Ms. Woody was involved in litigation with GM at  
7 the time, and so it's certainly possible that she had actual  
8 notice. And I think based on the facts that we know likely  
9 that she had actual notice. But as far as the service, there's  
10 certainly are some issues there that I wanted to bring to your  
11 Court -- the Court's attention.

12 THE COURT: Yeah. If you had a commercial claimant, I  
13 would throw this out at this point in the blink of an eye. But  
14 the additional fact that you brought my attention today, which  
15 I hadn't picked up from the papers, about her having mailed it  
16 before the deadline and just not having arrived at the time,  
17 coupled with the lack of prejudice to the Motors Liquidation  
18 estate on a very small claim of this size, it's a matter of  
19 concern to me.

20 MS. GREER: Your Honor, what we would ask -- and I  
21 understand the Court's view, and we wouldn't object to deeming  
22 the claims timely for the purpo -- for -- solely for this  
23 purpose for Ms. Woody. But what we would ask the Court to do  
24 is reclassify the claims. The claims are filed as secured  
25 priority claims, which is part of why we haven't just been able

1 to resolve them. These are claims that arose from an allegedly  
2 defective SUV, and so clearly they're unsecured claims. So if  
3 the Court is inclined to allow them as -- or deem them timely  
4 filed, we'd ask that the Court reclassify the claims. And that  
5 way we can just resolve them fully and finally.

6 THE COURT: Ironically, this is the exact same issue  
7 upon I was affirmed yesterday by Judge Buchwald in the district  
8 court on another person who had a car accident, who was trying  
9 to get secured status. And Judge Buchwald agreed with me that  
10 whatever it was, it wasn't a secured claim. I think that's  
11 very fair, Ms. Greer.

12 Settle an order in accordance with what you just said,  
13 but additionally provide that it is ordered that she has to  
14 respond to any existing settlement offers you have or tee up  
15 her matter for ADR within a time certain -- you pick a  
16 reasonable time. You got a little bit of flexibility to do  
17 that. Failing which, her claim will be dismissed for lack of  
18 prosecution.

19 MS. GREER: Thank you, Your Honor.

20 THE COURT: She's got to -- your willingness to not  
21 throw her out is commendable, but she's got to do what it takes  
22 to allow this case to move forward.

23 MS. GREER: Understood, Your Honor.

24 One --

25 THE COURT: Okay.



1 MS. GREER: -- more thing. Ms. Woody did file a  
2 motion seeking sanctions against --

3 THE COURT: That's denied.

4 MS. GREER: Thank you.

5 THE COURT: On the papers.

6 MS. GREER: Thank you very much.

7 THE COURT: Oh, put a decretal paragraph in the order  
8 that says that in baby talk.

9 MS. GREER: Thank you. Will do.

10 THE COURT: Okay.

11 MS. GREER: Your Honor, what Mr. Smolinsky points out  
12 to me, and I think is consistent with my understanding as well,  
13 I think the cli -- our client is inclined to allow the claim in  
14 the full amount as long as it's allowed as an unsecured claim  
15 in the interest of efficiency.

16 THE COURT: Very good, okay.

17 MS. GREER: Thank you, Your Honor.

18 THE COURT: Make it happen then.

19 Back to you, Mr. Smolinsky.

20 MR. SMOLINSKY: Thank you, sir. The two remaining  
21 matters: we have the Tullis matter. I'm not sure that I heard  
22 Mr. Tullis on the phone, but I believe after speaking with him  
23 yesterday he planned on attending.

24 THE COURT: He's on my phone log. Let's pause for a  
25 second. Mr. Tullis, are you on the phone?

1 MR. TULLIS: Yeah.

2 THE COURT: Oh, okay. We're going to -- is it your  
3 recommendation, Mr. Smolinsky, that we deal with Mr. Tullis'  
4 claim next?

5 MR. SMOLINSKY: Yes.

6 MR. TULLIS: Don't talk too fast. I can't hear  
7 (indiscernible) my hearing aids (indiscernible). Is this the  
8 Honorable Robert E. Gerber, or is this (indiscernible)?

9 THE COURT: This is the judge, Mr. Tullis. My name is  
10 Robert Gerber.

11 MR. TULLIS: I appreciate that. (indiscernible)  
12 Okay, sir. I appreciate that, and I'll do my best, but I am  
13 hard of hearing and am wearing hearing aids.

14 THE COURT: Okay. Mr. Smolinsky, the lawyer for GM,  
15 you may proceed.

16 MR. SMOLINSKY: Thank you. Clinton and Margaret  
17 Tullis has been pursuing claims against General Motors  
18 Corporation since 2008 relating to a 2004 motor vehicle  
19 accident. Our motion and reply describe a web of litigation  
20 that -- in state and federal court that goes well beyond a  
21 judicial determination that was previously made in state court  
22 that his claims are barred by the statute of limitations.

23 We have tried to inform Mr. Tullis that his continued  
24 litigation is in violation of the various orders of this Court,  
25 including the bar date order, the plan of confirmation and the

1 exculpation provisions. But in fact, Mr. Tullis continues to  
2 file various papers and pleadings in state court in Washington.  
3 Our understanding is that he might have filed additional  
4 pleadings as recently as yesterday in those actions.

5 Our efforts to advise him of his obligations pursuant  
6 to these bankruptcy court orders have not been met with a  
7 response other than his attempts to assert claims not only  
8 against General Motors Corporation, but also against my firm  
9 and members and associates of my firm for bringing that to his  
10 attention. At this point, I would advise the Court that Mr.  
11 Tullis did not file a proof of claim, although he did seem to  
12 file copies of state court pleadings in this court with a  
13 caption that references the Southern District of New York.

14 But we do not believe that that -- those pleadings  
15 could rise to the level of a -- an informal proof of claim, and  
16 they were not timely. We attached to our papers parts of the  
17 affidavit of service showing that both Margaret Tullis and  
18 Clinton Tullis received actual notice of the bar date and  
19 elected not to file claims in this court.

20 Your Honor, we would ask that you put an end to this  
21 litigation and to enforce this Court's prior orders so that we  
22 can continue to wrap up these estates.

23 THE COURT: All right. Mr. Tullis, I'll hear from you  
24 now. I read the papers. There seems --

25 MR. TULLIS: (indiscernible)

1 THE COURT: -- there seems --

2 MR. TULLIS: Your Honor?

3 THE COURT: No, okay. Please. One of the things you  
4 have to understand, Mr. Tullis, is you can't interrupt me. The  
5 facts that Old GM lays out do not appear to be disputed. And  
6 they're very serious. They show very serious violations of  
7 bankruptcy law. And while my in -- I'll hear what you have to  
8 say. And while my inclination isn't to throw you in jail or  
9 recommend that you be thrown in jail or to have you fined right  
10 now, it's to tell you that it's got to come to a stop right  
11 here and now.

12 Now, I need you to help me as a matter of either  
13 telling me that the facts that they put forward in their papers  
14 aren't true, or, as a matter of bankruptcy law, why I shouldn't  
15 enter an order saying you've got to stop. Go ahead, sir.

16 MR. TULLIS: Your Honor, (indiscernible) here in the  
17 state of Washington (indiscernible) there's crimes committed.  
18 I cannot (indiscernible). And Margaret's had her problems  
19 because of it, but not as much injury as I took. And it's  
20 something that you need (indiscernible), and you wouldn't want  
21 to go through it, either. And after I filed (indiscernible),  
22 General Motors Corporation, telling them what the situation was  
23 and that. They went right out immediately and ordered better  
24 steel for their vehicles.

25 They put it out for their framework, and it's much

1 stronger steel. And the same for the steering (indiscernible)  
2 steering. And they've sent me many papers out saying that they  
3 thank me for bringing those things up so they can take care of  
4 them and be proud of the vehicle that they manufacture. So I  
5 hope, again, together on this (indiscernible) Weil Gotshal &  
6 Manges tell me that I'm committing a crime by proceeding with  
7 my agenda they are off their -- up on the wrong trail. Are you  
8 there, sir?

9 THE COURT: Yes. I just didn't want to interrupt you.  
10 Are you finished, sir?

11 MR. TULLIS: Yeah. Yes, sir.

12 THE COURT: Okay. Mr. Smolinsky, do you wish to  
13 reply?

14 MR. SMOLINSKY: While we are sympathetic with Mr.  
15 Tullis' injuries and his wife's injuries, Mr. Tullis had his  
16 day in court. It was determined that he had no claim under  
17 Washington State law. His attempts to -- his attempts to  
18 criminal law in order to expand the statute of limitations I  
19 think evidences confusion on his part as to who can bring  
20 criminal actions and prosecute them.

21 My first takes very seriously the allegations that  
22 have been leveled against the firm and against individuals. We  
23 attached copies of our letter -- letters. And as you can see,  
24 sir, we did not allege any criminal activity of any kind but  
25 were merely pointing out that there orders of this Court which

1 bar the very things that Mr. Tullis is considering. I could  
2 see this spinning out of control. And while we don't seek  
3 sanctions at this point, we very much as serious about the  
4 possibility of seeking sanctions in the future.

5 THE COURT: All right. Okay. I want you to have a  
6 seat for a second, Mr. Smolinsky. Mr. Tullis, you're going to  
7 hear a couple of minutes of silence, and then I'm going to  
8 rule.

9 MR. TULLIS: Yes, sir. Your Honor (indiscernible).  
10 Okay.

11 THE COURT: All right. Just stand by, please.

12 All right. Folks, in this contested in the jointly  
13 administered cases of Motors Liquidation Company and its  
14 affiliates, Motors Liquidation and the GUC Trust move for an  
15 order protecting the debtors, the GUC Trust and their officers  
16 and professionals from actions initiated by Clinton M. Tullis  
17 and Margaret L. Tullis in violations on the Bankruptcy Code's  
18 automatic stay. The injunctions that have been previously put  
19 in place and exculpation provision set forth in the debtors'  
20 reorganization plan and in the order that I signed confirming  
21 the reorganization plan.

22 For the reasons that follow, the debtors' motion is  
23 granted. Turning first to my findings of fact. On January 17,  
24 2008, the Tullises commenced an action against General Motors  
25 Corporation in the Superior Court of the State of Washington

1 for the County of Pierce. The Pierce County Superior Court  
2 dismissed that action with prejudice on April 4th, 2008,  
3 finding that that Tullises' claims against the defendants were  
4 barred by the applicable statute of limitations.

5 Following this dismissal, the Tullises attempted to  
6 resurrect the action with motions to vacate and motions to show  
7 cause, and each of these attempts was unsuccessful.

8 On June 1st, 2009, the debtors commenced the Chapter  
9 11 case, which is now before me. The debtors were represented  
10 in the Chapter 11 case by the law firm of Weil Gotshal &  
11 Manges, which I'll refer to as Weil. Two weeks after the  
12 debtors commenced the Chapter 11 case, the Tullises filed a  
13 complaint in the U.S. District Court for the Western District  
14 of Washington. The district court complaint replicates the  
15 complaint filed in the Pierce County Superior Court, but with  
16 the additional handwritten notes that read "continuance of this  
17 case" and "This case is removed from Pierce County Superior  
18 Court to federal court; June 5" -- "15, 2009."

19 While the debtors say they were never served with the  
20 federal district court complaint, the Tullises did send a copy  
21 to the clerk of the bankruptcy court here, and the clerk's  
22 office filed it on the debtors' public docket at entry number  
23 1977 on June 19, 2009. That same day, the Washington State  
24 Federal District Court entered an order remanding the federal  
25 action back to the Pierce County Superior Court.

1           On September 16, 2009, I signed an order establishing  
2           November 30, 2009 as the deadline, which is sometimes known as  
3           a bar date, for filing claims against the debtors. The bar  
4           date order was served upon the Tullises as indicated of Exhibit  
5           D of the GUC Trust motion. Despite notice of the bar date, the  
6           Tullises failed to file any proofs of claim in the Chapter 11  
7           case.

8           Notwithstanding full knowledge of the Chapter 11 case,  
9           as evidenced, among other things, by their sending the clerk of  
10          the bankruptcy court the earlier federal district court  
11          complaint, the Tullises commenced yet another action against  
12          the debtors on July 16, 2010, once more in Washington State  
13          court, but this time in Washington State's Kings -- King  
14          County.

15          On July 30, 2010, the debtors' attorneys sent the  
16          Tullises a letter advising the Tullises of the bankruptcy and  
17          the requirements of the automatic stay, which prohibits the  
18          commencement or continuation of actions against any debtor that  
19          could have or were commenced prior to such debtors' filing of a  
20          petition for bankruptcy relief.

21          On December 30, 2010, the Tullises filed a revised  
22          complaint in the federal district court in Washington, adding  
23          Weil -- and two Weil attorneys as individual defendants,  
24          seeking a five-million-dollar fine and/or criminal sanctions  
25          against the Weil defendants. Though debtors and the Weil



1 defendants were not made aware of the revised complaint until  
2 it was filed in the bankruptcy court's docket at GM docket  
3 entry 10299.

4 On March 29, 2011, I entered an order confirming the  
5 debtors' plan of reorganization. That confirmation order and  
6 the underlying plan both include what are known as exculpation  
7 provisions providing that neither the debtors, the GUC Trust,  
8 nor their respective officers or professionals, which obviously  
9 includes both the Weil law firm and the Weil attorneys, "shall  
10 have or incur any liability to any holder of a claim or equity  
11 interest for any act or omission in connection with, related to  
12 or arising out of the Chapter 11 cases." See paragraph 52 of  
13 the confirmation order and Section 12.6 of the plan.

14 In addition, the plan provides for an injunction  
15 against interference with the implementation or consummation of  
16 the plan. See Section 10.7 of the plan. Both the plan and my  
17 confirmation order reserved to this bankruptcy Court, that's  
18 me, exclusive jurisdiction to consider matters arising out of  
19 or relating to these Chapter 11 cases. See paragraph 52 of the  
20 confirmation order and Sections 11.1 and 12.6 of the plan.

21 Now, turning to my conclusions of law and certain  
22 mixed findings of fact and law: the Tullises' actions -- and  
23 please listen to me, Mr. Tullis -- are in direct violation of  
24 the automatic stay, my bar date order, the plan and my  
25 confirmation order. I will address each violation in turn.

1           Section 362(a) of the Bankruptcy Code provides that  
2           the filing of a Chapter 11 petition serves as an automatic  
3           stay. Mr. Tullis, a stay is an injunction applicable to the  
4           commencement or continuation of an action against the debtor  
5           that was or could have been commenced before the petition date.  
6           That's Section 362(a) (1) of the Bankruptcy Code. The  
7           pending -- please don't interrupt me, Mr. Tullis. I'll give  
8           you a chance to speak after I have announced my ruling, okay?  
9           The pending King County action initiated by the Tullises in  
10          July of 2010 over a year after the bankruptcy case was filed  
11          clearly, very clearly, violates the automatic stay.

12          The King County action arises out of an automobile  
13          accident that occurred sometime around 2003 or 2004 and the  
14          subsequent surgery that was performed in 2005; all long before  
15          the commencement of the Chapter 11 case. The claims, if any,  
16          are pre-petition claims. And asserting them in an action,  
17          especially one brought after the filing date, violates the  
18          automatic stay. The Tullises clearly knew of the debtors'  
19          Chapter cases as early as June of 2009 when the clerk of this  
20          bankruptcy court received documents from the Tullises that were  
21          filed as docket entry number 1977 in the GM docket.

22          In any case, the debtors promptly notified the  
23          Tullises and the King County Court of GM's bankruptcy and the  
24          applicability of the automatic stay. Because the King County  
25          action was commenced in violation of the automatic stay, any

1 and all proceedings in that court are void. They have no  
2 effect. And that action much be dismissed. See, for example,  
3 E. Refractories Company Inc. v. 48 Insulations Inc.; 157 F.3d  
4 169 at page 172, a decision of the Second Circuit Court of  
5 Appeals in 1998. And while I find that the Tullises had actual  
6 notice of GM's bankruptcy before they blatantly violated the  
7 automatic stay, the law is that violations of the automatic  
8 stay are void even without notice. See for example, in re  
9 Heating Oil Partners LP; 422 Fed Appendix 15 at page 18, a  
10 decision of the Second Circuit, 2011.

11 Notice is, however, relevant to the bar date and the  
12 filing of proofs of claim. While it's undisputable that the  
13 Tullises had notice of the bankruptcy case, because they were  
14 sending the bankruptcy court notices since 2009 making explicit  
15 reference to the Chapter 11 case, I further find that the  
16 Tullises knew of the deadline for filing proofs of claim in  
17 these cases because the address on the debtors' bar date list  
18 matches the return address on the documents that the Tullises  
19 mailed to the bankruptcy court. But with notice of the bar  
20 date, the Tullises failed to file a proof of claim.

21 Having filed -- having failed to file a proof of claim  
22 prior to the bar date, the Tullises are barred from asserting  
23 any claims against the debtor.

24 MR. TULLIS: Your Honor?

25 THE COURT: Just a minute, please, Mr. Tullis.

1 I further find that the Tullises have violated the  
2 debtors' plan of reorganization and my order confirming the  
3 plan. The plan explicitly, that means clearly, enjoins  
4 claimants from taking any actions that interfere with the  
5 implementation or consummation of the plan. And under the plan  
6 and the confirmation order, people cannot go after the debtor's  
7 officers and professionals, either law firms or human beings  
8 working for those law firms with respect to any acts or  
9 commissions -- or omissions, excuse me, connected with the  
10 Chapter 11 cases.

11 I'm not going to move on beyond my official ruling.  
12 And Mr. Tullis, I'm saying this very softly. And I'm not  
13 screaming, but you have to understand how serious I am about  
14 this, and how serious what you did is. You have violated the  
15 Bankruptcy Code's requirements over and over again. You have  
16 violated my injunction over and over again. You are very lucky  
17 that the debtors aren't asking for sanctions, which is  
18 punishment. They're not asking for damages, and I'm not  
19 imposing that. But I'm telling you in the clearest terms I can  
20 that you got to stop.

21 Now, I am not imposing sanctions. I'm not referring  
22 you to criminal charges. I'm not making you write a check or  
23 threatening to have you jailed, but I am saying it's got to  
24 come to a stop. And your contention that they're doing  
25 something illegal and that you can ignore the requirements of

1 the Bankruptcy Code or my court orders is not in any way a  
2 defense to what you've been doing. If there is something  
3 criminal, that's for the district attorneys or the U.S.  
4 attorneys of the world to deal with, not you. The police power  
5 exception under the automatic stay does not apply to  
6 individuals who think that they've been legally wronged in some  
7 way.

8 The debtor is to settle an order in accordance with  
9 what I just dictated. Mr. Tullis, you're going to have a right  
10 to appeal, but you will have only fourteen days to bring that  
11 appeal. The time for bringing that appeal will run from the  
12 date of entry of the resulting order and not from the date of  
13 this dictated decision.

14 Now, Mr. Tullis, I think several times you interrupted  
15 me and you wanted to say something. Now I'll let you speak.  
16 Mr. Tullis, do you want to be heard? Mr. Tullis? Mr. --

17 MR. TULLIS: Sir -- yes, Your Honor (indiscernible).

18 THE COURT: Yes, sir, I am. Do you want to be heard?

19 MR. TULLIS: Well, now, I don't know. I never knew  
20 anything about an automatic stay. But the rules or laws that I  
21 know of here in the state of Washington states that I  
22 (indiscernible) or find other means to (indiscernible), not any  
23 criminal acts and when you committed a crime. And when I sent  
24 you a (indiscernible). I don't want to do that. I don't want  
25 to see them do that. And if they hit me with this automatic

1 stay and bring it back here, then I'll immediately go down to  
2 the governor, who's also -- has been an attorney for years, and  
3 we'll see about proceeding with the dismissal of their  
4 (indiscernible) rights selling vehicles in the state of  
5 Washington.

6 THE COURT: Mr. Tullis, I can't let you continue  
7 anymore.

8 MR. TULLIS: All right.

9 THE COURT: I've let you speak and speak without  
10 interrupting, but I can't let you speak anymore. I have ruled.

11 MR. TULLIS: (indiscernible)

12 THE COURT: I have ruled --

13 MR. TULLIS: (indiscernible) --

14 THE COURT: -- deeming your remarks to be a motion for  
15 reargument. Reargument is denied. If you still think my  
16 ruling is an error, your remedy is in the appellate courts,  
17 starting with the United States District for the Southern  
18 District of New York. With all respect -- and I've had many,  
19 many consumers who felt very saddened by what happened to them  
20 with their vehicles, and I feel their pain. I really do, but  
21 nobody before today, Mr. Tullis, has argued with me after I  
22 have ruled. And they have all understood that if they think  
23 that I got it wrong they've got to go to the appellate courts.  
24 And again, with all respect and sympathy, sir, that's what I'm  
25 telling you that you need to do.

1 Now, we need to go on to the next matter. CourtCall:  
2 Mr. Tullis can stay on the phone, or he can drop off as he  
3 prefers, but I'm directing you to put him on mute.

4 UNIDENTIFIED SPEAKER: Okay, Your Honor.

5 THE COURT: Thank you. All right. Mr. Smolinsky,  
6 next matter, please.

7 MR. SMOLINSKY: Thank you, sir. Ms. Greer --

8 MR. COBBLE: (indiscernible)

9 MR. SMOLINSKY: Before I get -- begin, Ms. Greer has  
10 asked to be excused.

11 THE COURT: Of course.

12 MR. SMOLINSKY: The last matter on the agenda --

13 THE COURT: Mr. Smolinsky, we're still on the record  
14 even though Mr. Tullis can no longer speak since we're done  
15 with him. I do of course want the order settled upon him so  
16 that he can be heard on the form of the order. And I want you,  
17 even though you might not be required by law to do it, to send  
18 him by overnight mail a notice of entry of the resulting order  
19 so it is entered, so he is on notice of when his time to appeal  
20 starts to run.

21 MR. SMOLINSKY: Of course, sir. And if we may, while  
22 we do not suppose that Your Honor would be comfortable  
23 directing the clerk of any other court to do anything, we would  
24 like to send a copy of the transcript of this hearing to the  
25 court where the actions are pending.

1 THE COURT: You may do so.

2 MR. SMOLINSKY: Thank you, sir.

3 The last matter on the calendar is the debtors'  
4 eighty-third omnibus objections to claim. This is a claim  
5 seeking to expunge welfare benefit claims of retired and former  
6 salaried employees. We are addressing today one claim filed by  
7 Joseph Cobble, Jr., which is a claim for life insurance --

8 THE COURT: Pause please, Mr. Smolinsky.

9 MR. SMOLINSKY: Yes.

10 THE COURT: Mr. Cobble, you are on the phone, and you  
11 announced your presence a long time ago. CourtCall: I want  
12 you to be sure that Mr. Cobble can speak and confirm that he is  
13 still on the line, or, Mr. Cobble, you can do that yourself.

14 MR. COBBLE: Yes, I'm still on the line.

15 THE COURT: Thank you. Continue then, please, Mr.  
16 Smolinsky.

17 MR. SMOLINSKY: Thank you, sir. Mr. Cobble filed a  
18 reply to that objection, which Your Honor should have. And  
19 we -- just in terms of context, Your Honor has dealt with  
20 hundreds of employee claims in the past. We have expunged  
21 claims. We've had hearings on disputed claims objections. We  
22 indicated to this Court in the past that there are certain  
23 instances in which employees have asserted that they've  
24 received letters or other correspondence that may alter the  
25 landscape in terms of Your Honor's ruling; although, we



1 expressed at the time our view that it didn't alter the law  
2 with respect to your prior rulings.

3 but I want to put this into context because we are now  
4 moving from plain vanilla objections, where Your Honor has, I  
5 believe, asked the employees, where we had hearings, did you  
6 receive any other documents or do you anything else that you  
7 want to put before the Court, and the answer was no. These are  
8 situations where often times there have been correspondence  
9 that these employees are relying on.

10 We file -- we did file a fifteen-page reply. And  
11 while Your Honor may think that that's overkill in connection  
12 with the one-page response that was filed by Mr. Cobble, we  
13 wanted to make sure that Your Honor had a full view and  
14 understanding of our position with respect to all of these  
15 related types of claims. And we're happy to answer any other  
16 questions surrounding this issue because before we set forth on  
17 having hearings with respect to this new round of claims we did  
18 go back and do substantial amount of research and consider and  
19 review all of the correspondence that have submitted by the  
20 various employees.

21 So that's by way of background. Mr. Cobble attaches  
22 to his response a letter that was received by him through the  
23 General Motors Retirement Center, which was actually a  
24 organization that was created by MetLife, who was administering  
25 various retirement plans for General Motors. And this letter,

1 according to Mr. Cobble, sets out a promise that his  
2 entitlement to life insurance would not change. I do point  
3 your attention to the language beneath that statement that says  
4 that the coverage is not guaranteed; although, we don't believe  
5 that that really has any impact as well.

6 we believe that these -- this letter does not create  
7 any separate entitlement to the employee plans that were in  
8 place and that were all subject to the company's ability to  
9 modify, amend or terminate those plans. And that's language  
10 which we set forth in the objections as well as in the reply,  
11 as well as in the -- in other documents that were submitted and  
12 circulated to employees from time-to-time. That includes the  
13 employee handbook that was circulated as well as summary plan  
14 descriptions, which were updated every five years and sent out  
15 to employees and retirees.

16 So regardless of receiving this letter, they would  
17 have been on notice periodically of the debtors' obligation --  
18 the company's obligation or right to amend, modify or terminate  
19 the plans at any time.

20 We cite in our papers the Sprague case, which is a  
21 case directly on point because it involves some of these very  
22 issues surrounding the GM plans. And the Court in that case  
23 sets out clearly that the reservation of rights to amend,  
24 modify or terminate the plans at any time is conclusive without  
25 a separate agreement or contract that would vest those rights.

1 And for those reasons, Your Honor, we believe that this letter  
2 that was actually sent out after Mr. Cobble retired does not  
3 alter the plan or the ability of the debtors to amend or  
4 terminate the plan.

5 As Your Honor knows that -- this plan was amended to  
6 bring down all employees' life insurance benefits to 10,000  
7 dollars. And New GM, under the master sale and purchase  
8 agreement, agreed to assume that liability so that employees  
9 could get and retirees could get the 10,000 dollars in cash  
10 upon their death.

11 THE COURT: Okay. I'll hear from you next, Mr.  
12 Cobble. Make your remarks as you see fit. But when you do so,  
13 I need you to be sure that you discuss the Sixth Circuit Court  
14 of Appeals case and Sprague v. General Motors. And Mr.  
15 Smolinsky, tell your associates -- although I think you signed  
16 the reply --

17 MR. SMOLINSKY: The Table of Contents?

18 THE COURT: -- that I'm supposed to have a table of  
19 cases so I don't have to leaf through something to find  
20 references to the Sprague case --

21 MR. SMOLINSKY: Your Honor, I did realize --

22 THE COURT: -- and a table of contents --

23 MR. SMOLINSKY: -- that when I reviewed on preparation  
24 for the hearing. And I apologize. It won't happen again.

25 THE COURT: All right, thank you. Mr. Cobble.

1 MR. COBBLE: Yes.

2 THE COURT: I'll hear your argument now.

3 MR. COBBLE: Okay. Now, the other attorney did state  
4 (indiscernible). And when you retire, you go through an exit  
5 interview, and you go through all the benefits. You go through  
6 the -- all the pension, any insurance, if it will be extended.  
7 So I wasn't aware that this would be a continuing life  
8 insurance policy. It did have some influence on the fact that  
9 I did accept the retirement. I know that -- and I guess I  
10 relied on the document. The document states life insurance  
11 (indiscernible) reduced to the ultimate amount (indiscernible)  
12 dollars. The ultimate amount will remain in effect for the  
13 rest of your life.

14 I'm not an attorney, but I can give you an engineer's  
15 point of view. If the definition of reduced is to bring to a  
16 certain state or condition, and the definition of ultimate is  
17 preclusive or final, this document that I received from the  
18 retirement center does not contain any reservation or right to  
19 modify, much less terminate. It states it will remain in  
20 effect for the rest of your life (indiscernible). So it did  
21 have some affect on my decision, and the extended insurance  
22 certainly something that I relied on.

23 As far as I'm concerned, I think that these decisions  
24 are irrevocable (indiscernible) age, health and cost of  
25 replacing (indiscernible). And in fact, it does just the

1 opposite. It makes clear that the benefit is fully reduced and  
2 will remain in effect for the rest of my life. And I guess  
3 (indiscernible).

4 THE COURT: Okay. Thank you. Mr. Smolinsky, do you  
5 wish to reply?

6 MR. COBBLE: Thank you, sir. Your Honor?

7 THE COURT: Yes. Thank you, sir.

8 MR. SMOLINSKY: Your Honor, the language in these  
9 retiree letters is unfortunate, I give you that, to the extent  
10 that it led on any employees about what could or could not be  
11 done with respect to the coverage. I do note in this  
12 particular letter that it says this is not a guarantee of the  
13 coverage amount, and that's pretty clear on its face.

14 With respect to the reliance issue, I would note that  
15 the Devlin case, which talks about promissory estoppel and  
16 reliance, talk about the rel -- it not being incidental  
17 reliance, but real reliance upon which the party acts or  
18 changes their course. And I guess the best example if you work  
19 for the next ten years, we will grant you lifetime coverage.  
20 In this case, the decision to retire was not based on this  
21 letter. This letter was sent out for information purposes, but  
22 the benefits that were promised to him were consistent with the  
23 plans that were in place, which all had this reservation of  
24 rights language.

25 Mr. Cobble would have received a couple of years later

1 the new summary plan description, which would have had all of  
2 the material rights to amend or terminate the benefits. He  
3 would have had in his possession, presumably, the employee  
4 handbook and the last summary plan description that would have  
5 this reservation of rights language. So under the four-part  
6 test that's set in Devlin, I don't believe that this letter  
7 gives rise to the kind of reliance that the Devlin Court  
8 considered.

9 THE COURT: Okay. Both sides -- have a seat, please,  
10 Mr. Smolinsky. Both sides sit in place for a couple minutes.

11 (Pause)

12 THE COURT: All right. Gentlemen, in this contested  
13 matter in the jointly administered Chapter 11 case of Motors  
14 Liquidation Company and its affiliates, the debtor, General  
15 Motors Corporation or Old GM, moves to disallow and expunge Mr.  
16 Cobble's claim. For reasons that follow, the debtor's motion  
17 must be granted, and Mr. Cobble's claim must be disallowed and  
18 expunged.

19 Before I go into the legal reasons, though, and my  
20 findings of fact, I do want to note something. Perhaps it's  
21 the obvious. This matter is very different than the first one  
22 on my calendar today. Here, we do not have in any way, shape  
23 or form an individual who has violated the requirements of the  
24 Bankruptcy Code or has in any way acted improperly. The issue  
25 isn't about his wrongful conduct. The issue ultimately is what

1 exactly his contract was with GM, which gave him the claim to  
2 the life insurance that he seeks now. And this is  
3 unfortunately one of the many cases where GM simply not having  
4 the resources to honor its earlier contracts caused it to amend  
5 those contracts. And the issue is whether or not GM had the  
6 right to change the contract in the way in which it did.

7 As I'll continue to point out, in this case, GM's  
8 contract with Mr. Cobble gave it the right to change his life  
9 insurance coverage. And therefore, although I recognize the  
10 hardship on Mr. Cobble and of course hundreds, if not  
11 thousands, of other employees who had to face the same  
12 situation, I'm required to comply with the law.

13 So with that, turning first to my findings of fact:  
14 on June 1st, 2009, the debtors commenced their Chapter 11 case.

15 On September 16, 2009, I entered an order establishing  
16 a deadline for the filing of proofs of claim. And Mr. Cobble  
17 timely, that is in time, submitted a proof of claim for what he  
18 seeks. His proof of claim asserts a claim for 112,049 against  
19 Old Gm for "loss for life insurance, salary, retiree."  
20 Basically, what he's saying is that he's entitled to the  
21 112,049 that would be payable upon his death under the old  
22 level of life insurance that he had at times prior to the  
23 commencement of the Chapter 11 case.

24 The debtors filed what are called omnibus, covering  
25 many people, claims objections to eliminate claims lacking in

1 legal support. They objected to Mr. Cobble's claim. Mr.  
2 Cobble filed a response, and the debtors replied.

3 In his papers, Mr. Cobble explains that he was  
4 employed by Old GM for thirty-two years before he retired in  
5 2002. He explains that his claim is for continuation of an  
6 earned and accrued benefit, to wit the continuing lifetime  
7 coverage and the future payment at the time of Mr. Cobble's  
8 death, of continuing life insurance benefits in the amount  
9 122,049 pursuant to the debtors' "life and disability program."  
10 Mr. Cobble further asserts that his benefit was acknowledged by  
11 the debtor in a writing dated April 18, 2002, which writing Mr.  
12 Cobble attaches to his response.

13 I note by way of clarification that, as Mr. Cobble  
14 pointed out in his argument today, and this fact is undisputed,  
15 the April 8th, 2002 letter came to him a few weeks after he  
16 retired rather than before he retired. The letter has three  
17 significant paragraphs. I'll revise my remarks to say four,  
18 although I think the list, although Mr. Cobble relies on it, is  
19 not quite as important as he says.

20 Those four paragraphs read, and I'll quote them  
21 verbatim, "As a retiree of General Motors with ten or more  
22 years of participation in the life and disability benefits  
23 program, you are eligible for continuing life insurance. Our  
24 insurance records, as of the date of this letter, show the  
25 continuing life insurance has now fully reduced to the ultimate



1 amount of \$122,049.00."

2 "This ultimate amount will remain in effect for the  
3 rest of your life and is provided by General Motors at no cost  
4 to you. This is not a guarantee of the coverage amount.  
5 Important: you should keep this notice with your other  
6 valuable papers."

7 On December 31st, 2011, the Motors Liquidation Company  
8 GUC Trust, which was formed under the debtors' plan of  
9 reorganization replied to Mr. Cobble's response. In that  
10 reply, the GUC Trust argues that Mr. Cobble's claim must be  
11 disallowed because his life insurance benefits were unvested  
12 welfare benefits that could be modified under the plan terms  
13 governing such welfare benefits and that they were properly  
14 modified under those terms.

15 Now, turning to my conclusions of law and certain  
16 mixed findings of fact and law: a proof of claim is prima  
17 facie evidence of the validity and amount of the claim, and the  
18 objector bears the initial burden of persuasion. See, for  
19 example, in re Oneida Limited; 400 BR. 384, at page 389, a  
20 decision by Judge Gropper of this court. The burden then  
21 shifts to the claimant, in this case that's Mr. Cobble, if the  
22 objector produces evidence equal in force to the prima facie  
23 case, which, if believed, would refute at least one of the  
24 allegations that's essential to the claim's legal sufficiency.

25 When the burden is shifted back to the claimant, the

1 claimant must then prove by a preponderance of the evidence  
2 that under applicable law the claim should be allowed. Here,  
3 the objecting debtors have produced evidence at least equal in  
4 force to the evidence provided by Mr. Cobble; thus, shifting  
5 the burden back to Mr. Cobble. And then, Mr. Cobble does not  
6 satisfy his burden under the law.

7 First, I find that Mr. Cobble has not met his burden  
8 to show that his life insurance have vested. Rather, the  
9 documents covering his life insurance reserved the right to  
10 change its level. In dealing with claims of Old GM retirees,  
11 which were similar to Mr. Cobble's present claim, the Sixth  
12 Circuit Court of Appeals in a case called Sprague v. General  
13 Motors Corp.; 133 F.3rd 338, at page 400, explain that to "vest  
14 benefits is to render them forever unalterable. Because  
15 vesting of welfare plan benefits is not required by law, an  
16 employer's commitment to vest such benefits is not to be  
17 inferred lightly. The intent to vest must be found in the plan  
18 documents and must be stated in clear and express language."

19 In their briefing, the debtors point to several  
20 welfare plan summaries which include language explicitly  
21 reserving the right to amend, modify, suspend or terminate  
22 welfare benefits. And I say by way of explanation that welfare  
23 benefits are benefits that employers provide that include,  
24 among other things, life insurance. So life insurance was one  
25 of the things that GM had reserved the right to change. And

1 when GM reserved that right, that became part of Mr. Cobble's  
2 contract with Old GM, if you will. So GM did something that it  
3 was authorized to do.

4 Now, that was the state of play when Mr. Cobble  
5 retired. And the letter dated April 8, 2002 doesn't change  
6 that result. Mr. Cobble skipped the key sentence when he read  
7 parts of the letter, but didn't read all of it. He skipped a  
8 sentence that said this is not a guarantee of the coverage  
9 amount. But with or without that extra clarification, the  
10 terms under which Mr. Cobble worked didn't change over the  
11 years that he was a GM employee.

12 Now, thirty-two years is a lot of years to work for a  
13 company, and everything in the record indicates that this was  
14 faithful employment. And I understand why Mr. Cobble is upset,  
15 and I understand it both from what Mr. Cobble said and what any  
16 number of employees said back in June and July of 2009 when  
17 this case was first filed. And I have to deal with these same  
18 issues. It doesn't please me to have to rule that people have  
19 to accept a lesser level of life insurance or medical benefits  
20 that are subject to similar considerations. But the fact is  
21 that there were limited resources to take care of GM retirees.

22 The letter of April 8, which was sent to him after he  
23 retired, explicitly stated it wasn't a guarantee of the  
24 coverage amount. In fact, it also told him of a reduction  
25 in -- to his ultimate amount of continuing life insurance

1 coverage. The fact that Old GM was able to reduce the ultimate  
2 amount of his coverage at this time underscores a fundamental  
3 point; that Old GM always had the right to modify the benefits.

4 While it's probably obvious, I make a few other  
5 observations to provide greater clarity and for the avoidance  
6 of doubt. The letter of April 8 didn't create a new contract  
7 between the debtors and Mr. Cobble. He had already retired.  
8 It can't reasonable interpreted as an offer to which Mr. Cobble  
9 could accept, nor is there any evidence in that letter that it  
10 includes language reasonably susceptible to interpretation as a  
11 promise. There was no evidence that Old GM promised Mr. Cobble  
12 certain life insurance benefits to induce his retirement or  
13 other action or inaction by Mr. Cobble. See, for instance,  
14 Devlin v. Empire Blue Cross and Blue Shield; 274 F.3d 76.

15 For those reasons, I am compelled to disallow Mr.  
16 Cobble's claim, and I am authorizing and directing the debtor  
17 to settle an order consistent with this decision. The time to  
18 appeal my decision will run from the date of entry of the order  
19 rather than the date I'm dictating this. And once more, Mr.  
20 Smolinsky, I want you to serve notice of entry on the resulting  
21 order in addition to the notice of settlement by an overnight  
22 mail mechanism so that Mr. Cobble knows when his time to appeal  
23 start to run.

24 Mr. Cobble, the time to appeal a bankruptcy court  
25 order is quite short. It's only fourteen days from the date of

1 entry of the order. So if you think about it and decide you do  
2 want to appeal, I want you to be aware of that short period of  
3 time. Once more, I underscore in connection with this decision  
4 that unlike the first matter on the calendar, Mr. Cobble did  
5 nothing wrong. But here, I am compelled to act in accordance  
6 with the law. So while I'm not happy about having to rule this  
7 way, the claim is disallowed.

8 Okay. Mr. Cobble, I sense that you're an engineer and  
9 not a lawyer. But not by way of reargument, because I have  
10 ruled, I will answer any questions you might have if you have  
11 any desire for a clarification.

12 MR. COBBLE: I just have one further question, and  
13 that's on a statement that this is not a guarantee of coverage  
14 amount. And in my point of view, I guess, guarantee in  
15 coverage, I would say that is an expression of a future  
16 happening. This is a perspective and not a statement of fact,  
17 and the rest of body of the letter, which states ultimately  
18 reduced and the rest of your life to mean that it's just a  
19 statement of fact. But I understand your points of view, and I  
20 certainly appreciate your time going through this.

21 THE COURT: Very well. Thank you. And of course, I  
22 appreciate your courtesy, sir.

23 All right. With that, we're adjourned. Everybody  
24 have a good day.

25 MR. COBBLE: Okay.

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MR. SMOLINSKY: Thank you, sir.

MR. COBBLE: Thanks for your time, sir.

(Whereupon these proceedings were concluded at 11:02 AM)

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**I N D E X**

**RULINGS**

	<b>Page</b>	<b>Line</b>
<b>Motion Requesting Enforcement of Court Orders</b>	<b>8</b>	<b>12</b>
<b>Setting Deadlines to File Proofs of Claim</b>		
<b>Granted as Modified</b>		
<b>Motion Filed by Ms. Woody Seeking Sanctions</b>	<b>9</b>	<b>3</b>
<b>Denied</b>		

1			
2	Motion of Post-Effective Date Debtors and	14	23
3	Motors Liquidation Company GUC Trust for		
4	Entry of Order Pursuant to 11 U.S.C.		
5	Sections 105(A) and 1142(B) and Fed R.		
6	Bankr. P. 7012(B) and 9014(C) (I) Directing		
7	The Tullises to Dismiss the Debtors and		
8	Their Attorneys from Pending Action with		
9	Prejudice; and (II) Enforcing Prior Orders		
10	Of this Court by Enjoining the Tullises from		
11	Further Action Against the Debtors,		
12	Post-Effective Date Debtors, Motors		
13	Liquidation Company GUC Trust, and Their		
14	Officers and Professionals		
15	Granted		
16			
17	Mr. Tullis' Oral Motion for Reargument is	22	15
18	Denied		
19			
20	Debtors' Eighty-Third Omnibus Objection to	30	17
21	Claims (Welfare Benefits Claims of Retired		
22	And Former Salaried and Executive Employees)		
23	- Only Cobble Claim Granted		
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C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Aliza  
Chodoff**

Digitally signed by Aliza Chodoff  
DN: cn=Aliza Chodoff, o, ou,  
email=digital@veritext.com,  
c=US  
Date: 2012.01.19 11:17:50 -05'00'

**ALIZA CHODOFF**

**AAERT Certified Electronic Transcriber CET\*\*D-634**

**Veritext**

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**Date: January 19, 2012**